

CEEAC/S6/24/12/1

Constitution, Europe, External Affairs and Culture Committee
Thursday 16 May 2024
12th Meeting, 2024 (Session 6)

Office for the Internal Market Annual Report

1. The Committee previously took evidence from the Office for the Internal Market (the OIM) on [7 September 2023](#) when considering the OIM's annual report for 2022-23.
2. This session is an opportunity for members to consider the latest annual report from the OIM, for the period 2023-24.
3. A SPICe briefing is attached at **Annexe A**.

Clerks to the Committee
May 2024

Annexe A: SPICe briefing

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

The Office for the Internal Market: annual report 2023-24

Background

On 20 March 2024, the Office for the Internal Market ('OIM') published its [annual report on the operation of the internal market for 2023-24](#). Today's evidence session provides an opportunity for the Committee to discuss the OIM's second annual report on the UK internal market.

The OIM is part of the [Competition and Markets Authority](#), which is [a non-ministerial department of the UK Government](#). The OIM [describes its objective](#) as "to support the effective operation of the UK Internal Market. It assesses whether the Internal Market is operating effectively and provides expert and independent advice to UK government and devolved administrations."

The [OIM gave evidence](#) to the Committee on its annual report for 2022-23 on 7 September 2023.

OIM duties under the UK Internal Market Act 2020

The UK Internal Market Act 2020 ("the Act") gives powers to the OIM to monitor, advise and report on the internal market. The Act also gives the OIM as part of the CMA enforceable investigatory powers to support its work. The [Act provides](#) that:

"The objective is to support, through the application of economic and other technical expertise, the effective operation of the internal market in the United Kingdom", including "supporting the operation of the internal market" in the "interests of all parts of the United Kingdom" and "in the interests of consumers of goods and services as well as other classes of person with an interest in its operation."

[Guidance on the Operation of the OIM](#) explains that its role is advisory, not decision-making. OIM can provide reports or advice on specific regulatory provisions, including proposals relating to such regulatory provisions. Such reports or advice are provided upon the request of the UK Government, Scottish Government, Welsh Government or a Northern Ireland Department.

The Act defines ‘advice’ distinctly from ‘report’. OIM is required to publish reports but there is no such requirement for advice. Advice given by OIM at the request of one government or Northern Ireland Department must be shared with the other governments/ Northern Ireland Department (i.e., those who did not request the advice).

The OIM must also produce reports on the state of the internal market. These reporting duties are explored below.

State of the internal market reports

The OIM must report annually¹. The annual report must consider:

- the operation of the internal market in the UK, and
- developments as to the effectiveness of the operation of that market.

OIM is also required to report periodically (every five years)². The periodic report requires the OIM to report on:

- the effectiveness of the operation of provisions of Parts 1 to 3 of the Act³;
- the impact of the operation of Parts 1 to 3 of the Act on the operation and development of the internal market in the UK;
- any interaction between the operation of Parts 1 to 3 of the Act and common framework agreements; and the impact of common framework agreements on the operation and development of the internal market in the UK.

Such reports must be laid before the UK Parliament and devolved legislatures.

The OIM published its [first annual report on the operation of the internal market](#) as well as its [first periodic report on the UK internal market regime](#) on 22 March 2023.

The reports were the first insight into how the OIM would undertake its general reporting duties, and how it would assess the functioning of the internal market alongside linked issues – including the process for exclusions from the market access principles of the UK Internal Market Act 2020 and common frameworks. As stated above, the Committee [took evidence on these reports in September 2023](#).

The role of the OIM in respect to common frameworks

The OIM’s role *“includes reporting on the impact of common framework agreements on the operation and development of the internal market in the United Kingdom and any interaction between the operation of Parts 1 to 3 of the Act and common framework agreements”*⁴.

The OIM explained in an [evidence session with the House of Lords Common Frameworks Scrutiny Committee](#) in November 2021, that the OIM’s reports may be

¹ Section 33(5) of UKIMA sets out the requirement for an annual report

² Section 33(6) of UKIMA provides for OIM to report periodically (every five years).

³ Broadly, this is the market access principles for goods and services and mutual recognition of professional qualifications.

⁴ [Summary of consultation responses \(publishing.service.gov.uk\), para 3.17](#)

used as part of the evidence presented in any disputes which arise from frameworks. The OIM itself does not have a role in dispute resolution which will be initiated if agreement cannot be reached at official level through existing intergovernmental dispute resolution mechanisms.

The annual report 2023-24

The OIM published its [annual report for 2023-24](#) on 20 March 2024. It was also laid in the UK Parliament, Scottish Parliament, Senedd Cymru, and the Northern Ireland Assembly.

The report notes that the UK's internal market regime post EU-exit, governed by the UK Internal Market Act 2020 ("UKIMA"), is still at an early stage. Consequently, the report states that:

“Against this backdrop, we have not attempted to draw firm conclusions about the future direction of travel for the UK internal market. Notwithstanding this, the regulatory developments over the last year, combined with businesses’ initial responses to those developments, provides some insights into some of the dimensions of future change for the internal market.”

The report provides information on the operation of the UK internal market, including:

- intra-UK trade
- developments in the regulatory landscape including four case studies on business strategies in response to changes in regulations
- future areas of possible regulatory divergence.

These areas explored in the report are discussed in more detail in the following sections.

Experience of intra-UK trade

The report provides analysis of intra-UK trade flows, which is trade between England, Wales, Scotland, and Northern Ireland. It provides information on both intra-UK sales and purchases.

Based on data from the Office for National Statistics [Business Insights and Conditions Survey](#), the report finds that more than half of businesses that sold goods and services to customers in other UK nations state that they did not face any challenges when doing so. The biggest issue cited by businesses was a lack of demand (17%).

The report indicates that in 2015 (the most recently available data), intra-UK sales were estimated to have comprised 34% of Scottish GDP. This compares to 54% for Wales, 26% for Northern Ireland, and 6% for England.

Across the UK, the report finds that in 2021 businesses in manufacturing and wholesale were more likely to trade with other UK nations than other sectors. However, the report notes that 'business and other services' are estimated to account for the largest values in sales to the rest of the UK in Scotland, a finding

consistent with the OIM's 2022-23 report. In particular, this sector includes financial and insurance activities which are estimated to comprise 19% of Scotland's sales.

It should be noted that this intra-UK trade analysis is primarily based on 2015 and 2021 data (UKIMA came into force on 31 December 2020). The report states that data on intra-UK trade is limited, and comparability is affected by differing methodologies, publication timelines, and a lack of data for England. The OIM published a [Data Strategy Roadmap in March 2023](#) and a revised [Data Strategy Roadmap on 9 May 2024](#). The updated Data Strategy Roadmap OIM states:

“includes developments relating to intra-UK trade data covered in the original roadmap, but also broadens the scope to cover data on supply chains, freight movements and parcel movements.”

To understand intra-UK trade the OIM works with the Office for National Statistics, UK government departments and the devolved governments.

Developments in the regulatory landscape

The 2023-24 annual report states, that:

“Over the last year, there has been a significant increase in the number of proposed differences in regulations within the scope of UKIMA.”

Most of these proposals relate to goods, particular within the food and drink sector. The report provides overviews of four regulatory developments that are affecting, or have the potential to affect, the UK internal market:

- single-use plastic
- deposit return schemes
- high fat, salt or sugar food and drink restrictions
- precision breeding.

The report provides case studies on how businesses within the relevant sectors are responding to the changes. This is discussed in more detail in the next section of this briefing.

In terms of an overall assessment of regulatory developments, the OIM concluded that:

“Drawing on the available data we find little evidence that, over the last year, there has been a substantial change in the functioning of the internal market across the UK. Notwithstanding this, certain sectors, especially food and drink, have seen a more significant build-up of proposed and actual regulatory difference than other sectors.”

Case studies on business strategies

The annual report provides case studies on strategies employed by businesses to manage regulatory differences, focussing on:

- single-use plastic

- deposit return schemes
- high fat, salt or sugar food and drink restrictions
- precision breeding.

The case studies in the OIM's report cover both actual and anticipated business strategies and are based on a series of interviews with businesses operating in industries affected by the regulations. The strategies given by businesses varied across sector and types of regulatory changes, but there were some commonalities which are considered below.

Use of market access principles

The report finds that the case studies on single-use plastics, precision breeding, and deposit return schemes indicated:

“a clear view, particularly among the larger businesses in those sectors with significant operations in the devolved nations, that the Market Access Principles are unlikely to be used as the preferred approach to address regulatory differences.”

This refers to the possibility that businesses could, in the absence of an exclusion to the market access principles, sell goods on, for example, the Scottish market which are lawfully produced in or first imported into other parts of the UK (even where such goods do not comply with Scottish regulations). The report notes:

“Clearly, if this view is widespread, it will have significant implications for the internal market regime but, on the basis of the research we have undertaken to date, it is difficult to say with confidence how widespread this effect may be.”

Simple supply chains

Another finding of the report's case studies was that businesses indicated a desire to reduce supply chain complexity, typically by adopting a 'highest common denominator approach'. The OIM report states:

“We consider this a particularly significant finding – it suggests that larger businesses, with more complex UK-wide supply chains are likely to play a role in establishing ‘UK-wide norms’ that transcend individual policy making by each of the governments.”

If this approach was not feasible, businesses indicated that they may consider reducing the range of products offered in the nation with different regulations or focussing their business on one nation or a subset of nations.

Global considerations

A further finding was that for many businesses, the UK's internal market is part of a wider global marketplace. Given that, factors such as the views of customers and regulations in import/export markets are a significant factor in their decision-making.

For example, the case study on precision breeding highlighted the significance of EU policy and European consumer sentiment for strategies adopted by businesses whose supply of a product or input is imported or who have a significant customer base in the EU. More generally, the importance of customer preferences was repeatedly noted by businesses as a core factor in their decision to adopt a highest common denominator approach or take advantage of opportunities arising from regulatory differences.

Policy design

One additional finding by the OIM was that reactions by businesses are sensitive to the policy design behind regulatory divergence, such as:

- whether they permit a ‘highest common denominator approach’ (or prevent it by instituting incompatible requirements e.g., a product has to be labelled in blue if produced in one part of the UK and green if produced in another)
- at which point in the supply chain the regulation has its effects (with evidence suggesting that regulations that have their effects at the end of the supply chain are less disruptive to businesses)
- whether the effects of regulations arise in or outside the nation where it has been introduced.

As an overall assessment of the operation of the UK’s internal market, the report states:

“The emerging picture of the internal market is that on the one hand, regulatory differences are starting to build up, albeit slowly and with goods affected more considerably than services, especially in food and drink. On the other hand, businesses are adapting creatively to the new regulatory realities in ways that often preserve existing trade flows and supply chains. The relative strength of these forces is yet to become clear and policy makers can make choices that, even if they pursue differing regulations, may assist businesses in keeping existing trade flows open.”

Wider developments in the regulatory regime and future areas of regulatory divergence

The OIM has also [published three appendices to the report](#).

[Appendix A](#) provides an overview of wider developments in the regulatory regime and stakeholders’ views on these. This includes responses from the Scottish Government, UK Government, and Welsh Government to the impact of the Windsor Framework and the Retained EU Law Act 2023, the operation of common frameworks and the process for considering exclusions to the market access principles of UKIMA.

The Scottish Government and Welsh Government stated their support for common frameworks as a co-operative means for managing the internal market following EU exit. The Department for Business and Trade (which responded on behalf of UK

Government departments) noted that in anticipation of the return of the Northern Ireland Executive, work was ongoing to prepare common frameworks that have been scrutinised by legislatures for full implementation.

On exclusions to the market access principles of UKIMA, the Scottish Government described exclusions as “*essential to the functioning of devolved policy and ensuring that regulations passed by devolved legislatures can be implemented effectively*”. The Department for Business and Trade stated that exclusions can support policy innovation and the piloting of initiatives from which the wider UK can learn and benefit. It further expressed the view that UKIMA itself does not restrict policy development or the ability to proceed with similar initiatives in areas of devolved competence.

The Scottish Government stated that the exclusions process “*did not operate as intended*” in relation to the Scottish Deposit Return Scheme and that an effective process is crucial to the viability of the common frameworks programme. It further noted a lack of an agreed process for considering exclusions outside of policy areas covered by common frameworks. The Welsh Government stated that the exclusions process “*lacks structure and predictability for the administration applying for an exclusion*”.

[Appendix C provides a list of current and upcoming regulatory changes](#) in relation to goods, services, and professional qualifications in the following areas that have the potential to affect the UK internal market:

- fireworks
- rodent glue traps and animal snares (and related provisions of pest control services)
- vapes
- alcohol advertising
- further single-use plastics measures
- minimum unit pricing of alcohol
- net zero policies (phasing out of gas boilers, and petrol/diesel cars)
- plasticated wet wipes
- reforms to assimilated law relating to wine
- XL Bully dogs
- regulation of cosmetic procedures
- national standards for taxi and private hire vehicles
- licensing of activities involving animals
- tourism measures (licensing of short-term lets and visitor levies)
- certification of electricians in Scotland
- licensing of dog walkers and providers of other canine services in Scotland
- licensing of practitioners of non-surgical cosmetic procedures in England
- licensing of individuals involved in waste transportation in England
- licensing of building inspectors in England
- licensing of acupuncture, body piercing, electrolysis, and tattooing procedures
- regulation of pharmacy technicians in Northern Ireland.

Possible areas of discussion

Today's evidence session with the OIM is an opportunity to discuss the operation of the UK internal market and the OIM's role in providing advice to the UK Government and devolved governments.

In light of the OIM's statement that there was a significant increase in the number of proposed differences in regulations within the scope of UKIMA within the reporting period, Members may wish to discuss with witnesses what impact these regulatory differences may have on the UK internal market.

Members may also wish to explore with witnesses the views of stakeholders, including governments, on the implications of the REUL Act, common frameworks, and exclusions to the market access principles of UKIMA. In connection with this, Members may wish to discuss areas in which exclusions to the UKIMA market access principles have been sought or discussed, for example deposit return schemes, glue traps and disposable vapes.

Members may also be interested to discuss the OIM's engagement with businesses and awareness of the UKIMA in the business community. In particular, Members may wish to explore the views given by businesses on strategies they may use to respond to regulatory divergence across the UK and how these may, in turn, shape the impact regulatory divergence has on the UK internal market.

Annie Bosse and Sarah McKay, SPICe Research
7 May 2024

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

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